A.F.R.
19-09-2006

(131)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

Writ Petition No. 87 of 2006

Writ Petition No.1954 of 2006

O R D E R

POST IT FOR PRONOUNCEMENT
OF THE ORDER ON: **19/09/2006**

Sd/-
The Chief Justice

A.F.R.
19-09-2006.

(132)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

Writ Petition No.87 of 2006

PETITIONER

Smt. Anita Agrawal,
W/o Santosh Kumar Agrawal,
Aged about 37 years,
Occupation: Business
R/o Main Road, Kargi Road,
Tehsil: Kota, District Bilaspur,
Chhattisgarh.

VERSUS

RESPONDENTS

1. Union of India
Through the Secretary,
Ministry of Petroleum,
New Delhi.
2. Hindustan Petroleum Corporation Limited (a subsidiary of the Government of India), Through its Chairman-cum-Managing Director, Registered Office:17, Jamshedji Tata Road, Mumbai.
3. Regional Director,
Hindustan Petroleum Corporation Limited, Regional Office: Second Floor, Madina Manzil, Medical College Road, Raipur,
Chhattisgarh.
4. Smt. Mitu Agrawal,
R/o Kargi Road, Tehsil: Kota,
District: Bilaspur, Chhattisgarh.

Writ Petition No.1954 of 2006

PETITIONER

Mittu Agrawal, W/o Shri Ajay Kumar Agrawal, aged 28 years, resident of M/s Pushkar Lal Naval Kishore Medical Stores, Kargi Road, Kota, District Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS

1. Union of India through Secretary, Ministry of Petroleum & Energy, New Delhi.
2. Hindustan Petroleum Corporation Limited (a subsidiary of Govt. of India), through Chairman-cum-Managing Director, Registered Office:17, J.D. Tata Road, Mumbai (MS).

3. Regional Director, HPCL, Raipur Retail Region, Madina Manzil, 2nd Floor, Medical College Road, Raipur (Chhattisgarh)
4. General Manager, HPCL Richardson & Cruddas Bldg., Sir JJ Road, Byculla Mumbai – 400 008 (MS)
5. Chief Manager NWP-WZ, HPCL Richardson & Cruddas Building, Sir J.J. Byculla, Mumbai – 400 008. (MS)
6. Smt. Anita Agrawal, W/o Santosh Kumar Agrawal, Aged 37 years, R/o Main Road, Kargi Road, Tahsil Kota, Distt: Bilaspur (CG)

Present: Shri Rajiv Shrivastava, learned counsel for the petitioner in Writ Petition No.87 of 2006.

Shri Manindra Shrivastava, learned Sr. Advocate, with Shri Vivek Shrivastava and Shri Amrito Das, learned counsel for the petitioner in Writ Petition No.1954 of 2006.

Shri S.K. Beriwal, learned Standing Counsel for the Union of India.

Shri Bhishma Kinger, learned Standing Counsel for Hindustan Petroleum Corporation Limited and its authorities.

O R D E R

(Passed on of September, 2006)

A clash of claims between Smt. Anita Agrawal, who is the petitioner in Writ Petition No.87 of 2006 and respondent No.6 in Writ Petition No.1954 of 2006, and Smt. Mittu Agrawal, who is the petitioner in Writ Petition No.1954 of 2006 and respondent No.4 in Writ Petition No.87 of 2006, to secure retail outlet dealership for petroleum products at Kota is a subject matter of judicial review in these writ petitions filed under Article 226 of the Constitution of India.

(2) Hindustan Petroleum Corporation Limited (HPCL in brevity) is a Oil Company and subsidiary of Government of India engaged in supply and distribution of petroleum products. For this purpose, HPCL has been

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engaging retail outlet dealers to sell petroleum products. For the purpose of selection of retail dealer for establishment of retail outlet at Kota, an advertisement was published on 19/08/2005 inviting applications from the eligible candidates. Retail outlet at Kota was reserved for women of open category.

(4) Smt. Anita Agrawal and Smt. Mittu Agrawal in response to the advertisement applied for dealership for the outlet in the prescribed proforma. The applicants including Smt. Anita Agrawal and Smt. Mittu Agrawal were interviewed on 19/11/2005 and after that process, Smt. Mittu Agrawal was selected for award of dealership, as per Annexure-P/7 dated 19/11/2005 produced in Writ Petition No.87 of 2006.

(5) Smt. Anita Agrawal feeling aggrieved by the said action of the HPCL, filed Writ Petition No.87 of 2006 in this Court on 06/01/2006 by contending that according to the norms fixed for appointment of dealer under the head "capability to provide land and infrastructure facilities", if an applicant is having clear title of the land, 35 marks have to be awarded by each of the three members constituting the interview committee, but, in her case though she has clear title on the land and infrastructure facilities, the interview committee awarded only 25 marks and that action of the interview committee is not only discriminatory but also contrary to the rules framed by HPCL. On account of this discriminatory treatment meted out to her, Smt. Anita Agrawal contended, she was pushed down to second position behind Smt. Mittu Agrawal. It appears that in the meanwhile Smt. Anita Agrawal also made a representation to the authorities of the HPCL against her non-selection as a dealer urging the same contention which is urged in Writ Petition No.87 of 2006.

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(6) As per the return filed by the HPCL and its authorities in Writ Petition No.1954 of 2006, the zonal office of the HPCL at Mumbai conducted verification of the dealer selection documents including the marks awarded to all the candidates and found that the marks awarded to Smt. Anita Agrawal were not in accordance with the guidelines. It is stated that the scrutiny and verification of dealer selection documents was done by a highly placed officer of the HPCL who is one grade senior to the senior most member of the selection committee. In that view of the matter and on the basis of the outcome of the above scrutiny and verification of dealer selection, a memo/report dated 06/02/2006 was prepared by Shri A.J. Lawankar, Chief Manager, NWP (West Zone), HPCL, the fifth respondent in Writ Petition No.1954 of 2006, recommending for cancellation of the entire interview process conducted on 19/11/2005 and its outcome to grant retail outlet dealership at Kota and directing Raipur Retail Region to hold fresh interview. A copy of that memo/report dated 06/02/2006 is produced and marked as Annexure-P/1 in Writ Petition No.1954 of 2006. On the basis of Annexure-P/1, Shri M.S. Damle, General Manager (West Zone), HPCL, the fourth respondent in Writ Petition No.1954 of 2006, addressed a letter to the Regional Manager, Raipur Retail Region, HPCL, the third respondent in Writ Petition No.1954 of 2006 informing the latter that it has been decided to cancel the interview as well as empanelment of candidates for the location at Kota conducted on 19/11/2005 and directing the third respondent to arrange for the fresh interview for that location for the same applicants who had applied in response to the advertisement dated 06/11/2005 after giving sufficient time to them as per the guidelines. The fourth respondent also directed the third respondent to ensure compliance of all dealer selection guidelines. The letter written by the fourth respondent dated 06/02/2006 to

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the third respondent is produced and marked as Annexure-P/2 in Writ petition No.1954 of 2006.

(7) Smt. Mittu Agrawal feeling aggrieved by Annexure-P/1 and Annexure-P/2 preferred Writ Petition No.1954 of 2006 under Article 226 of the Constitution of India in this Court on 12/04/2006. In view of this development, Smt. Anita Agrawal filed I.A. No.6286 of 2006 in Writ Petition No.87 of 2006 for amendment of her writ petition to raise an additional ground that in view of the finding recorded in Annexure-P/1 and Annexure-P/2 produced in Writ Petition No.1954 of 2006, the HPCL and their authorities ought to have granted retail outlet dealership at Kota to her and ought not to have cancelled empanelment itself, and that there was no necessity to conduct fresh interview. In the said application, Smt. Anita Agrawal also sought amendment of the prayer for quashing of the order (Annexure-P/2) dated 06/02/2006 and for a direction to the HPCL and its authorities to allot retail outlet dealership at Kota to her. That interlocutory application for amendment was allowed by this Court vide its order dated 21/07/2006. The HPCL and the Regional Director of HPCL at Raipur, the second and third respondents respectively, in Writ Petition No.87 of 2006, also filed I.A. No.2289 of 2006 for amending their return to raise a defence that in view of Annexure-P/1 and Annexure-P/2 produced in Writ Petition No.1954 of 2006, Writ Petition No.87 of 2006 has been rendered infructuous and the same has to be dismissed as infructuous. That application was also ordered by this Court vide order dated 21/07/2006. In Writ Petition No.87 of 2006 returns are filed on behalf of respondents 2 & 3 as well as respondent No.4. Similarly, in Writ Petition No.1954 of 2006 also, returns on behalf of respondents 1 to 5 as well as respondent No.6 are filed.

(8) Writ Petition No.87 of 2006 and Writ Petition No.1954 of 2006 were clubbed and heard them together for final disposal on 21/07/2006, 27/07/2006 and 31/07/2006. I heard Shri Rajiv Shrivastava, learned counsel for Smt. Anita Agrawal, Shri Manindra Shrivastava, learned Sr. Advocate for Smt. Mittu Agrawal, Shri S.K. Berowal learned Standing Counsel for the Union of India and Shri Bhishma Kinger learned Standing Counsel for the HPCL.

(9) Shri Rajiv Shrivastava would contend that if the members of the interview committee were to correctly award 35 marks each as has been done in the case of others including Mittu Agrawal, Smt. Anita Agrawal should have been placed at Serial No.1 in the select list and, therefore, non-selection of Smt. Anita Agrawal as No.1candidate in the select list and not awarding outlet dealership at Kota to her is *ex facie* illegal, arbitrary and unreasonable. Shri Rajiv Shrivastava would also contend that the HPCL and its authorities after necessary scrutiny and verification were satisfied that the members of the interview committee ought to have awarded 35 marks each and in that event in the select list Smt. Anita Agrawal should have been placed at Serial No.1 as reflected in Annexure-P/1 and Annexure-P/2 produced in Writ Petition No.1954 of 2006. Shri Rajiv Shrivastava would contend that in view of above finding the HPCL and its authorities have acted illegally in cancelling the interview itself and directing to conduct fresh interview. He would, therefore, submit that Annexure-P/2 dated 06/02/2006 produced in Writ Petition No.1954 of 2006 has to be quashed and a direction be issued to the HPCL and its authorities to award retail outlet dealership at Kota to Anita Agrawal.

(10) Shri Manindra Shrivastava, learned senior counsel appearing for Smt. Mittu Agrawal, *per contra,* would contend that Annexure-P/2 is

grossly illegal and arbitrary, based on extraneous consideration and aimed at extending undue favour and patronage to Smt. Anita Agrawal. He would submit that since the non-selection of Smt. Anita Agrawal for award of outlet dealership at Kota was seized by this Court in Writ Petition No.87 of 2006, the HPCL authorities ought not to have taken any action on the representation made by Smt. Anit Agrawal and ought to have awaited the decision of this Court in Writ Petition No.87 of 2006. Shri Manindra Shrivastava would contend that the HPCL and its authorities having conducted the enquiry and having assessed the suitability of Smt. Mittu Agrawal as per the guidelines based on the report of the State Inspection Committee and having selected her for award of outlet dealership are estopped from cancelling the selection at the instance of Smt. Anita Agrawal. He would also highlight that in the return filed by the HPCL and its authorities in Writ Petition No.87 of 2006, they have defended their action stating that while making selection of Smt. Mittu Agrawal they have followed the guidelines, whereas, in the return filed in Writ Petition No.1954 of 2006 they have changed their stand and contended that Smt. Anita Agrawal ought to have been awarded 35 marks by each of the interview committee members under the head "capability to provide land and infrastructure facilities" and, if that was done by the members of the interview committee, she should have been placed at Serial No.1 in the select list. According to Shri Manindra Shrivastava this double standard of the HPCL and its authorities would show the arbitrariness and favoritism practiced by them in order to help Smt. Anita Agrawal for extraneous consideration.

(11) Shri Bhishma Kinger learned standing counsel for the HPCL and its authorities would submit that there was justification to cancel the interview dated 19/11/200[illegible] the third respondent in Writ Petition

No.1954 of 2006 to conduct fresh interview in order to ensure transparency and fairness to all applicants. He would highlight that it is not that either Smt. Anita Agrawal or Smt. Mittu Agrawal are left out of competition in the fresh interview to be conducted. He would point out that it was specifically directed by the fourth respondent that the fresh interview should be confined only to the applicants who have applied in response to the advertisement dated 19/08/2005. He would submit that there is no failure of justice, and there is absolutely no justification for Smt. Anita Agrawal and Smt. Mittu Agrawal to press their writ petitions for decision-making in view of the changed circumstances and the decision taken by the HPCL and its authorities to conduct fresh interview. Shri S.K. Beriwal learned Standing Counsel for the Union of India would support the submission of Shri Bhishma Kinger.

(12) Having heard learned counsel for the parties, a short question that arises for decision is whether in view of the decision now taken by the HPCL and its authorities to cancel the result of the interview conducted on 19/11/2005 and to conduct fresh enquiry for the same applicants is liable to be interfered with and whether this Court should undertake suitability of Smt. Anita Agrawal or Smt. Mittu Agrawal for awarding outlet dealership at Kota on merit.

(13) It is quite often said and reiterated by the Hon'ble Supreme Court and High Courts that while reviewing the administrative and statutory actions under Article 226 of the Constitution of India, High Court cannot assume the role of an appellate Court or authority. Judicial review is not directed against the decision as such but only against the decision-making. Judicial review, it is trite, has certain inherent limitations. It is for the

executive and statutory authorities to administer the law and the function of the Court is to ensure that the executive and the statutory authorities carry out their duties and functions in accordance with the provisions of the Constitution and statutes concerned. In other words, the duty of the Court is to confine itself to the question of legality. The Court can consider whether a decision-making authority exceeded its powers, committed an error of law, violated rules of natural justice, reached a decision which no reasonable man would have reached or otherwise misused or abused its powers. The Court can only examine whether the decision-making process was reasonable, rational, not arbitrary, not violative of Article 14 of the Constitution and the principles of fairness in procedure and principles of natural justice. In **S.R. Bommai Vs. Union of India**[1] the Hon'ble Supreme Court opined that the parameters of judicial review must be clearly defined and never exceeded. If the authority has faulted in its wisdom, the Court cannot act as super auditor. Unless the orders by statutory or administrative authorities are unlawful or unconstitutional, the power of judicial review cannot be exercised. An order of administrative authority or statutory authority may be right or wrong. It is the administrative authority's or statutory authority's right to trial and error and so long as the exercise is *bona fide* and within the limits of the authority, no interference is called for. In short, the power of judicial review is supervisory in nature. Unless this restriction is observed, the Court, under the guise of preventing abuse of power by the administrative authority or the statutory authority, will itself be guilty of usurping power, as held by the Hon'ble Supreme Court in **Tata Cellular Vs. Union of India**[2].

(14) Bernard Schwartz in his Administrative Law, 2nd Edn., page 584 states thus:

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[1] (1994) 3 SCC 1 : AIR 1994 SC 1918
[2] (1994) 6 SCC 651 : AIR 1996 SC 11

> "If the scope of review is too broad, agencies are turned into little more than media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. It makes judicial review of administrative orders a hopeless formality for the litigant. ..... It reduces the judicial process in such cases to a mere feint."

The above passage of Bernard Schwartz was cited with approval by the Hon'ble Supreme Court in its judgments in **Tata Celluar Vs. Union of India (Supra[1])**. In **Tata Celluar Vs. Union of India (Supra[1])** the Supreme Court was pleased to observe thus:

> "The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention, the other covers the scope of the court's ability to quash an administrative decision on its own merits. *These restraints bear the hallmarks of judicial control over administrative action.*
>
> (emphasis supplied)"

(15) In this case, though Smt. Mittu Agrawal has contended that the impugned action in cancelling the interview and deciding to conduct fresh interview is *mala fide* and intended to favour Smt. Anita Agrawal, the pleading in that regard as vague as it could be. Necessary factual matrix to bring home the *mala fide* against the HPCL and its authorities is not laid in the pleadings of Smt. Mittu Agrawal. Furthermore, no proof is laid before the Court to support that plea. Lot of arguments were advanced before the Court by learned counsel appearing for Smt. Anita Agrawal and Smt. Mittu Agrawal as if they were arguing before a fact-finding original authority or a trial Court

minutely dissecting and highlighting the pieces of evidence in their favour and appealing to the Court to uphold their respective claims. There is no need for me to refer to those arguments, because, I am of the considered opinion that this Court cannot dissect each and every materials which has gone into decision-making by the HPCL and its authorities in concluding that in the interview held on 19/11/2005, the members of the interview committee did not conduct the proceedings fairly and did not award correct marks to Smt. Anita Agrawal under the head "capability to provide land and infrastructure facilities". Be that as it may, having perused the material documents placed before the Court, it cannot be said that the above finding is *ex facie* perverse and untenable. Furthermore, it needs to be noticed that the HPCL and its authorities has not awarded outlet dealership to Smt. Anita Agrawal after cancelling the award earlier made in favour of Smt. Mittu Agrawal. I should say that in all fairness, the HPCL and its authorities have now decided to conduct fresh interview confined only to those applicants who applied for outlet dealership in response to the advertisement dated 19/08/2005. The object seems to be that the applicants who have applied for the dealership in response to the advertisement should not be prejudiced by inviting fresh applications and at the same time to see that the interview should be conducted fairly with transparency to find out a suitable candidate strictly adhering to the guidelines prescribed by the administration of the HPCL. Thus, there is absolutely no warrant for this Court to step-in under Article 226 of the Constitution and delay the process of selecting a suitable candidate for award of outlet dealership, and such course would not be in the interest of the public at large in general and the consumers of the petroleum products in particular. There is already considerable delay on account of the intervention of the Court.

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(16) In the result and for the foregoing reasons, I dismiss both the writ petitions. The parties are, however, directed to bear their respective costs in both the writ petitions.

Sd/-
The Chief Justice